



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

April 7, 2021

Tracy Renaud
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529

Re: Equitable Relief for Stakeholders Impacted by Delayed Rejections

Dear Ms. Renaud:

On behalf of the American Immigration Lawyers Association (AILA) and our more than 15,000 members, we write to express our concern regarding the rejection of immigration benefits applications and petitions by USCIS over the past few months. In particular, we are troubled that it is taking USCIS up to three months, and in some cases even longer, to return rejected applications and petitions to stakeholders. Such lengthy delays by USCIS in timely returning rejected applications and petitions has left many stakeholders without the ability to refile their application or petition with USCIS due to no longer being eligible for the immigration benefit.

While AILA appreciates and applauds USCIS for taking initial steps to address and rectify this situation by allowing certain stakeholders to refile their Form I-485 adjustment of status application if it was rejected by USCIS for leaving boxes 9.a., 9.b. 9.c., or 10 blank in Part 2 of the form, AILA urges USCIS to adopt and implement additional accommodations to provide equitable relief to stakeholders who filed their applications and petitions in good faith yet received a rejection from USCIS months after the original date of filing. This situation merits equitable relief as USCIS's delay in timely returning rejected applications and petitions to stakeholders has resulted in a significantly negative impact on stakeholders who filed their application and petition with USCIS in good faith and detrimentally relied on USCIS to timely notify them of the receipt or rejection of their application or petition. Stakeholders impacted by USCIS's delays include individuals who have waited for years in the immigrant visa backlog who are no longer immediately eligible for the immigration benefit originally sought, children who have aged out of their visa status, and stakeholders who have been placed at risk of having to return to their home countries in the midst of a global pandemic, among many others.

Background

In Fall 2020, USCIS began experiencing a significant uptick in the number of applications and petitions filed with the USCIS Lockboxes. In December, AILA began receiving reports of severe delays by USCIS in issuing receipt notices for applications and petition filed during this timeframe. Although USCIS normally issues receipt notices within two to four weeks of receiving an application or petition, USCIS began taking up to 10 weeks, and in some cases longer, to issue a

AILA National Office

1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

receipt notice. Subsequently, in late December/early January, AILA began receiving reports from our members of applications and petitions being rejected by the USCIS Lockbox up to three months after the application or petition had originally been filed with USCIS. Based on a survey of our membership, we received more than 130 case examples of receipt notice delays and rejections impacting a vast array of application and petitions, including Form I-485, I-765, I-140, I-751, I-601, I-129F, I-130, and I-589, among others.¹ USCIS cited many reasons for the rejections, such as the failure to check a particular box on the form, failure to include all pages of a form, failure to sign a form, and failure to include a filing fee. In many cases, the application or petition did in fact include the form, signature, or filing fee which USCIS claimed was deficient. In other cases, a question on the form was inadvertently missed but was nonmaterial to the overall application or petition. More recently, AILA has received reports that USCIS is rejecting applications and petitions for expired filing fees, up to four months after the application was originally filed with the USCIS Lockbox, even though the filing fee was timely at the time of filing and the expiration was due to USCIS's own delay in presenting the filing fee checks to a financial institution for payment. USCIS is charging applicants a \$30 service fee for each declined fee payment instrument.

Equitable Relief for Stakeholders Impacted by Delayed Rejections

While USCIS has taken initial steps to address the situation by allowing certain I-485 applicants the ability to refile, AILA urges USCIS to adopt additional measures to provide equitable relief to impacted stakeholders. In particular, AILA urges USCIS to adopt the following accommodations:

- Accept back all erroneously rejected applications and petitions such as ones where USCIS claims a filing fee, form or signature was missing when in fact it was included in the original filing, deem the application or petition to have been received on the date the initial application or petition was received at a USCIS Lockbox, and issue a notification to stakeholders clarifying the process by which such erroneously rejected applications and petitions can be refiled with USCIS.
- Timely cash filing fee checks that are submitted with applications and petitions. To the extent that USCIS is delayed in timely cashing filing fee checks before they expire, USCIS should issue a Request for Evidence for new filing fees, instead of rejecting applications and petitions on this basis. For applications and petitions that USCIS has rejected due to expired filing fees, when the filing fees were valid at the time of filing and the delay in cashing the checks was attributable to USCIS, the agency should accept back such applications and petitions, deem them to have been received on the date the initial application or petition was received at a USCIS Lockbox, and waive the \$30 service fee.
- Invite all stakeholders who filed their application or petition between October 1, 2020 and December 31, 2020 and whose application or petition was rejected but failed to be returned by USCIS within four weeks of submission the opportunity to refile their application or petition with USCIS and assign such applications and petitions the original date of receipt at a USCIS Lockbox.

¹ AILA would welcome the opportunity to provide USCIS with a high-level summary of the case examples AILA has received to help inform the agency regarding the types of rejections stakeholders have been receiving.

- Given that a large number of stakeholders who were applying for adjustment of status (Form I-485) were impacted by these rejections, AILA urges USCIS to work with the Department of State to reopen the Dates for Filing charts of the Visa Bulletin to allow impacted stakeholders the opportunity to refile their rejected adjustment of status applications.
- Due to the unprecedented delay in receiving a receipt notice for applications and petitions filed with USCIS, and fearing a potential rejection from USCIS up to three months or more after filing, some stakeholders preemptively filed a second, duplicate application or petition with USCIS. In some cases, this has resulted in two duplicate applications for the same beneficiary accepted and receipted by USCIS, including two sets of filing fees cashed for the same beneficiary, a costly outcome for stakeholders. As equitable relief for the considerable uncertainty and delay that stakeholders have experienced as a result of the agency's intake delays, AILA urges USCIS to identify any duplicate applications and petitions that were submitted by the same applicant or petitioner for the same beneficiary since October 1, 2020, and to issue a refund for the duplicate filing fee.

We thank you for your consideration of this matter. If you require any additional information or clarification, such as specific case examples of the issues highlighted above, please contact Sharvari (Shev) Dalal-Dheini at (202) 507-7621 or by email at sdalal-dheini@aila.org or Diane Rish at (202) 507-7642 or by email at drish@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

cc: Felicia Escobar Carrillo, Chief of Staff, Office of the Director
Connie Nolan, Acting Associate Director, Service Center Operations Directorate
Amanda Baran, Chief, Office of Policy and Strategy
Carrie M. Selby, Acting Associate Director, External Affairs Directorate
Phyllis A. Coven, Ombudsman, Office of the Citizenship and Immigration Services
Ombudsman
Nathan Stiefel, Deputy Ombudsman, Office of the Citizenship and Immigration Services
Ombudsman
Elissa McGovern, Chief of Policy, Office of the Citizenship and Immigration Services
Ombudsman